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No. 92-602

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1992

ST. MARY'S HONOR CENTER and STEVEN LONG,

Petitioners,

VS.

MELVIN HICKS,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED OCTOBER 5, 1992
CERTIORARI GRANTED JANUARY 8, 1993

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NOTATION REGARDING OMITTED ITEMS

The following opinions, decisions, judgments, and orders have been omitted in printing this Joint Appendix because they appear on the following pages in the Appendix to the printed Petition for Certiorari:

Order of the United States District Court, Eastern District of Missouri, dated January 31, 1991	A-13
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RELEVANT DOCKET ENTRIES

June 27, 1988	Plaintiff's First Amended Complaint
July 5, 1988	Defendant Long's Answer to Plaintiff's First Amended Complaint
July 5, 1988	Defendant St. Mary's Honor Center's Answer to Plaintiff's First Amended Complaint
December 7, 1989	Order and Memorandum Granting Summary Judgment in Favor of Defendant Long on Count II
June 5, 1990	Non-Jury Trial (First Day)
June 6, 1990	Non-Jury Trial (Second Day)
June 14, 1990	Non-Jury Trial (Third Day)
January 31, 1991	Order Granting Summary Judgment in Favor of Defendants on Counts I and III
January 31, 1991	Memorandum in Support of Order
February 28, 1991	Notice of Appeal
July 23, 1992	Opinion and Judgment of Court of Appeals
August 5, 1992	Petition for Rehearing or Rehearing en banc
September 3, 1992	Order Denying Petition for Rehearing or Rehearing en banc

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

NO. 88-0109-C-5

MELVIN HICKS,
Plaintiff,

vs.

ST. MARY'S HONOR CENTER, et al.,
Defendants.

PLAINTIFF'S FIRST AMENDED COMPLAINT

Comes now the plaintiff, by and through his attorney, and for his first amended complaint against defendants states as follows:

COUNT I - 42 U.S.C. 2000 (e) et seq.

PARTIES

1. Plaintiff Melvin Hicks is a black male, a resident of the County of St. Louis in the State of Missouri, and a citizen of the United States of America.

2. Defendant St. Mary's Honor Center is a facility of the Division of Adult Institutions of the Department of Corrections and Human Resources of the State of Missouri and is located in the City of St. Louis in the State of Missouri. One of its purposes is to serve as a halfway house for male inmates who are released from medium and minimum security correctional institutions to the honor centers program for the Center to assist the inmates in their reentry into the community.

3. The defendant Division of Adult Institutions of the Department of Corrections and Human Resources of the State of Missouri (hereinafter also referred to as the "Division") is a governmental unit of the State charged with the supervision and

management of adult correctional institutions, including the St. Mary's Honor Center.

4. Defendant Steve Long was at all times relevant herein the Superintendent of St. Mary's Honor Center and was charged with receiving the recommendation of disciplinary review boards and to recommend personnel actions to the Director of the Division. Defendant Long is presently serving as the Assistant Director of Corrections and is being sued in his individual and official capacity.

JURISDICTION

5. Jurisdiction of this Court is invoked pursuant to 42 U.S.C. §2000(e) et seq., 28 U.S.C. §1331, and 28 U.S.C. §1343 as plaintiff is alleging violations of his rights guaranteed by 42 U.S.C. §§1981, 1983, 1988, and 2000(e) et seq.

NATURE OF THE ACTION

6. Plaintiff was employed by defendants on August 22, 1978, and was dismissed by defendants from his employment as a Corrections Officer I with St. Mary's Honor Center effective June 7, 1984.

7. At the time of his dismissal, plaintiff's monthly salary was \$1,169.00.

8. That prior to his dismissal, plaintiff was demoted to the position of Corrections Officer I from the position of Corrections Officer II by letter dated April 24, 1984, effective May 7, 1984.

9. That plaintiff appealed his demotion and dismissal to the Personnel Advisory Board which affirmed his demotion and dismissal by action dated January 11, 1985.

10. On or about April 11, 1984, plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission (hereinafter referred to as the "EEOC"), numbered

07284105, alleging racial discrimination in employment conditions.

11. That the reason given for plaintiff's demotion was "failure to adequately fulfill the responsibilities of his position".

12. That the true reasons for his demotion were his race, black, and retaliation for having filed a prior charge of discrimination against defendants.

13. That the reason given for his dismissal was an allegation of insubordination which was alleged to have occurred on April 27, 1984.

14. That the true reasons for his dismissal were his race, black, and retaliation for having filed a prior charge of discrimination against defendants.

15. That on or about May 7, 1984, plaintiff filed a Charge of Discrimination against defendants with the EEOC alleging that he had been demoted due to racial discrimination and in retaliation of his having filed a prior charge of discrimination, said charge being numbered 072841261, thereafter plaintiff amended his complaint by charge numbered 072850649 to allege that he had been dismissed due to his race Black and in retaliation of his having filed a prior charge of discrimination.

16. That on or about October 30, 1987, the EEOC, having concluded its processing of Charge Number 07284105, issued plaintiff a "right-to-sue letter".

17. That on or about March 18th, 1988, the EEOC having concluded its processing of Charge Number 072841261 and 072850649, issued plaintiff a "right-to-sue letter".

18. Shortly after his dismissal, plaintiff filed a claim with the Division of Employment Security of the State of Missouri for unemployment benefit payments. The deputy determined that

the plaintiff was not dismissed for misconduct connected with his job and was not disqualified for benefits, said decision being rendered on June 27th, 1984. The Department of Corrections and Human Resources on July 6, 1984 filed an appeal from the deputy's decision to the Missouri Division of Employment Security and a hearing was scheduled for August 14th, 1984. The employer did not appear at this hearing, the employer's appeal was dismissed and the determination of the deputy became final.

19. That the defendants had full opportunity to litigate the issue of whether plaintiff was discharged for misconduct connected with his work before the Division of Employment Security of the State of Missouri; that under the laws of the State of Missouri that existed at that time, the issue of misconduct has been determined and that defendant is precluded from contesting this issue in any other forum.

20. That as a result of the discriminatory and retaliatory actions of defendants, plaintiff has lost wages and ancillary employment benefits, all to his damage in the approximate amount of Seventy-Five Thousand Dollars (\$75,000.00).

WHEREFORE, the plaintiff prays for judgment against defendants, jointly and severally, in the amount of Seventy-Five Thousand Dollars (\$75,000.00), reinstatement to his position as Corrections Officer II, and for his attorney fees and costs incurred herein.

COUNT II - 42 U.S.C. §1981

21. Plaintiff hereby repeats, realleges, and incorporates by reference herein the allegations contained in Paragraphs One through Twenty, inclusive, of this complaint.

22. That the actions of defendants have denied plaintiff, a black citizen, the full and equal benefits of the laws and proceedings for the security of persons and property as is enjoyed by white citizens in violation of plaintiff's rights under 42 U.S.C. §1981.

23. That the actions of defendant Long in so depriving plaintiff were willful and intentional.

24. That due to the discriminatory actions of defendant Long, plaintiff has been caused to lose wages and ancillary employment benefits, has been caused to suffer stress and loss of reputation, of self-esteem and of the opportunities to advance in his profession.

WHEREFORE, plaintiff prays for judgment against defendant Long in his official and individual capacity in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) in actual damages and for FIFTY THOUSAND (\$50,000.00) DOLLARS in punitive damages, plus his attorney fees and costs incurred herein.

COUNT III- 42 U.S.C. §1983

25. Plaintiff hereby repeats, realleges, and incorporates by reference herein the allegations contained in Paragraphs One through Twenty, inclusive, of his complaint.

26. That at all times mentioned herein defendants were acting under color of statutes, regulations, customs, or usage, of the State of Missouri, to subject plaintiff to the deprivation of his deprivation of his rights and privileges as secured by the Constitution and the laws in violation of 42 U.S.C. §1983.

27. That the actions of defendant Long in so depriving plaintiff were willful and intentional.

28. That due to the discriminatory actions of defendant Long plaintiff has been caused to lose wages and ancillary employment benefits, has been caused to suffer stress and loss of reputation, of self-esteem and of the opportunities to advance in his profession.

WHEREFORE, plaintiff prays for judgment against defendant Long in his individual and official capacity in the amount of

ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) in actual damages and FIFTY THOUSAND (\$50,000.00) DOLLARS in punitive damages, plus his attorney fees and costs incurred herein.

(Subscription omitted in printing.)

(Certificate of service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

(Title omitted in printing.)

**DEFENDANT LONG'S ANSWER
TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

Comes now defendant Steve Long, and in answer to Plaintiff's First Amended Complaint:

Count I

1. Admits that plaintiff Melvin Hicks is a black male.
2. Admits that defendant St. Mary's Honor Center is an adult correctional institution of the Division of Adult Institutions of the Department of Corrections and Human Resources of the State of Missouri and is located in the City of St. Louis in the State of Missouri.
3. Admits that defendant Division of Adult Institutions of the Department of Corrections and Human Resources of the State of Missouri is a governmental unit of the state charged with the regulation, control and supervision of adult correctional institutions, including the St. Mary's Honor Center.
4. Admits that Steve Long was the Superintendent of St. Mary's Honor Center from January 7, 1984, through May 16, 1985, and was charged with receiving the recommendations of administrative review committees and recommending personnel actions to the Director of the Division of Adult Institutions, and is presently serving as an Assistant Director of the Division of Adult Institutions.
5. Admits that plaintiff is alleging violations of his rights guaranteed by 42 U.S.C. §§ 1981, 1983 and 2000e, *et seq.*, and is invoking the jurisdiction of this Court under 42 U.S.C. § 2000e, *et seq.* and 28 U.S.C. §§ 1331 and 1343.

6. Admits that plaintiff was employed by the Division of Corrections of the Department of Social Services on August 22, 1978 and was dismissed by the Division of Adult Institutions of the Department of Corrections and Human Resources from his employment as a corrections officer I at St. Mary's Honor Center effective June 7, 1984.

7. Denies each and every other allegation of Count I of Plaintiff's First Amended Complaint not hereinabove expressly admitted.

8. Count I fails to state a claim upon which relief can be granted.

9. Count I is barred by laches and the applicable statute of limitations, 42 U.S.C. § 2000e-5(f).

10. Count I is barred by plaintiff's failure to file charges of discrimination or retaliation in demotion or discharge with the EEOC within 180 days of their occurrence, 42 U.S.C. § 2000e-5(e).

11. Count I is barred by plaintiff's failure to name defendant Long as a respondent in any charges of discrimination or retaliation in demotion or discharge filed with the EEOC, 42 U.S.C. § 2000e-5(f).

12. Defendant Long is not subject to suit under 42 U.S.C. § 2000e, *et seq.* in his individual capacity.

13. Affirmative collateral estoppel does not apply.

14. Affirmative collateral estoppel is barred by § 288.215, H.C.S. H.B. 1485 (84th Missouri General Assembly, 2nd Regular Session).

WHEREFORE, defendant Long requests that this Court dismiss with prejudice Count I of Plaintiff's First Amended Complaint, and award defendant Long his costs and expenses of this

action, including a reasonable attorney's fee, and such other and further relief as this Court considers appropriate.

Count II

15. Incorporates herein by reference, as if set forth verbatim, the allegations of paragraphs 1 through 7, inclusive, of Count I of this answer.

16. Denies each and every other allegation of Count II of Plaintiff's First Amended Complaint not hereinabove expressly admitted.

17. Count II fails to state a claim upon which relief can be granted.

18. Defendant Long has qualified immunity from liability and suit.

19. Defendant Long has good faith immunity from liability.

20. Count II is barred by collateral estoppel or *res judicata*.

21. Defendant Long, in his official capacity, has Eleventh Amendment immunity.

22. 42 U.S.C. § 2000e, *et seq.* is plaintiff's exclusive remedy for discrimination or retaliation in demotion or discharge.

23. Count II is barred by the applicable statute of limitations, § 516.140, RSMo 1986, or § 516.130, RSMo 1986.

24. Affirmative collateral estoppel does not apply.

25. Affirmative collateral estoppel is barred by § 288.215, H.C.S. H.B. 1485 (84th Missouri General Assembly, 2nd Regular Session).

WHEREFORE, defendant Long requests that this Court dismiss with prejudice Count II of Plaintiff's First Amended Complaint, and award defendant Long his costs and expenses of this

action, including a reasonable attorney's fee, and such other and further relief as this Court considers appropriate.

Count III

26. Incorporates herein by reference, as if set forth verbatim, the allegations of paragraphs 1 through 7, inclusive, of Count I of this answer.

27. Denies each and every other allegation of Count III of Plaintiff's First Amended Complaint not hereinabove expressly admitted.

28. Count III fails to state a claim upon which relief can be granted.

29. Defendant Long has qualified immunity from liability and suit.

30. Defendant Long has good faith immunity from liability.

31. Count III is barred by the applicable statute of limitations, § 516.140, RSMo 1986, or § 516.130, RSMo 1986.

32. Count III is barred by collateral estoppel or *res judicata*.

33. Defendant Long, in his official capacity, has Eleventh Amendment immunity.

34. 42 U.S.C. § 2000e, *et seq.* is plaintiff's exclusive remedy for discrimination or retaliation in demotion or discharge.

35. Affirmative collateral estoppel does not apply.

36. Affirmative collateral estoppel is barred by § 288.215, H.C.S. H.B. 1485 (84th Missouri General Assembly, 2nd Regular Session).

WHEREFORE, defendant Long requests that this Court dismiss with prejudice Count III of Plaintiff's First Amended Complaint, and award defendant Long his costs and expenses of

this action, including a reasonable attorney's fee, and such other and further relief as this Court considers appropriate.

(Subscription omitted in printing.)

(Certificate of service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

(Title omitted in printing.)

**DEFENDANT ST. MARY'S HONOR CENTER'S
ANSWER TO PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Comes now defendant St. Mary's Honor Center, and in answer to Plaintiff's First Amended Complaint:

Count I

1. Admits that plaintiff Melvin Hicks is a black male.
2. Admits that defendant St. Mary's Honor Center is an adult correctional institution of the Division of Adult Institutions of the Department of Corrections and Human Resources of the State of Missouri and is located in the City of St. Louis in the State of Missouri.
3. Admits that defendant Division of Adult Institutions of the Department of Corrections and Human Resources of the state of Missouri is a governmental unit of the State charged with the regulation, control and supervision of adult correctional institutions, including the St. Mary's Honor Center.
4. Admits that Steve Long was the Superintendent of St. Mary's Honor Center from January 7, 1984, through May 16, 1985, and was charged with receiving the recommendations of administrative review committees and recommending personnel actions to the Director of the Division of Adult Institutions, and is presently serving as an Assistant Director of the Division of Adult Institutions.
5. Admits that plaintiff is alleging violations of his rights guaranteed by 42 U.S.C. §§ 1981, 1983 and 2000e, *et seq.*, and

is invoking the jurisdiction of this Court under 42 U.S.C. § 2000, *et seq.* and 28 U.S.C. §§ 1331 and 1343.

6. Admits that plaintiff was employed by the Division of Corrections of the Department of Social Services on August 22, 1978 and was dismissed by the Division of Adult Institutions of the Department of Corrections and Human Resources from his employment as a corrections officer I at St. Mary's Honor Center effective June 7, 1984.

7. Denies each and every other allegation of Count I of Plaintiff's First Amended Complaint not hereinabove expressly admitted.

8. Count I fails to state a claim upon which relief can be granted.

9. Count I is barred by laches and the applicable statute of limitations, 42 U.S.C. § 2000e-5(f).

10. Count I is barred by plaintiff's failure to file charges of discrimination or retaliation in demotion or discharge with the EEOC within 180 days of their occurrence, 42 U.S.C. § 2000e-5(e).

11. Affirmative collateral estoppel does not apply.

12. Affirmative collateral estoppel is barred by § 288.215, H.C.S. H.B. 1485 (84th Missouri General Assembly, 2nd Regular Session).

WHEREFORE, defendant St. Mary's Honor Center requests that this Court dismiss with prejudice Count I of Plaintiff's First Amended Complaint, and award defendant St. Mary's Honor Center its costs and expenses of this action, including a reasonable attorney's fee, and such other and further relief as this Court considers appropriate.

Count II

13. Makes no answer to Count II, because Count II is not directed to defendant St. Mary's Honor Center.

Count III

14. Makes no answer to Count III, because Count III is not directed to defendant St. Mary's Honor Center.

(Subscription omitted in printing.)

(Certificate of Service omitted in printing.)

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

(Title omitted in printing.)

**VOLUME 1
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE STEPHEN N. LIMBAUGH**

APPEARANCES:

For the Plaintiff: **CHARLES R. OLDHAM**
317 North 11th Street
Suite 1220
St. Louis, MO 63101

For the Defendants: **GARY L. GARDNER**
Asst. Attorney General
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P.O. Box 899
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* * *

MELVIN HICKS — DIRECT EXAMINATION

[1-12]

* * *

MELVIN HICKS, PLAINTIFF, SWORN:

DIRECT EXAMINATION

* * *

QUESTIONS BY MR. OLDHAM:

Q. Would you state your name, please?

[1-13]

A. Melvin Hicks.

* * *

[1-29]

* * *

Let me hand you what has been marked as Plaintiff's Exhibit 3.

Mr. Hicks, what is that document?

A. This is a memo stating that effective February the 4, that I would be Shift Commander of the first shift., 11:30 p.m. to 7:30 a.m.

Q. That was the shift that you were on?

A. Yes, it was.

* * *

[1-31]

* * *

Now, shortly after that, did you have an occasion to receive another shift change?

A. Yes, I did.

Q. And who notified you about the shift change?

A. Captain Powell.

Q. Let me hand you what has been marked as Exhibit 10.

And is this your notification of your shift change?

A. Yes, sir.

Q. After you got your notification of your shift change, did you make any objections, or request any considerations?

A. Yes, I did.

Q. And who did you address that to?

A. I wrote a request to Captain Powell.

Q. Okay.

I hand you what has been marked as Plaintiff's Exhibit 11.

Is this the memorandum you wrote requesting that change?

A. Yes, sir.

Q. Basically why did you request a shift change?

A. For the reason my wife was going back to work, and [1-32] I was going back to school.

Also, in order to attend church on Sundays.

Q. All right.

Was your request — What happened to your request?

A. It was denied.

* * *

[1-68]

Now, at the time of your demotion, you had a [1-69] meeting with Mr. Long and Captain Powell, is that correct?

A. That's correct.

Q. This was sometime in April?

A. Yes.

Q. All right.

Who else was present at that meeting?

A. Mr. Vincent Banks.

Q. Now, what was said at that meeting?

MR. GARDNER: Objection, your Honor. It's too broad and vague.

QUESTIONS BY MR. OLDHAM:

Q. Can you tell me what —

THE COURT: Why didn't you particularize it, Counsel.

QUESTIONS BY MR. OLDHAM:

Q. Can you tell me what Mr. Long said to you?

A. Yes.

I was called into Mr. Bank's office by Mr. Long and Mister — and Captain Powell.

And they informed me that I had been demoted; and that my salary had been decreased.

A. All right.

Could you tell me your state of mind at that time?

A. Well, when he told me that, well, I asked him could I leave for today, you know.

[1-70]

Q. You asked who?

A. I asked Superintendent Steve Long, could I leave.

Q. Why did you ask him that?

A. Because I had stress on me, you know.

Q. Were you upset?

A. Yes, I was upset.

And Superintendent Long gave me clearance to leave.

Q. All right.

Now after — what did you do after the meeting, when you left the meeting?

A. After he gave me — requested that I could leave, I walked outside the door, and Captain Powell followed me outside the door.

Q. How close was he to you?

A. He was stepping on the heels [sic] of my shoe.

Q. What did he say to you?

A. Well, I was talking to the Control Center Officer.

I was trying to explain to her that the Superintendent had told me I could leave for the day, using comp time.

And he was hollering in my ear, saying "No, he is not taking comp time."

And kept, you know, following me and chasing me up and down.

And he asked me about the manual, sergeant manual, [1-71] which he had asked me earlier.

And I told him it was in my other vehicle, that I was driving my wife's vehicle, you know.

MR. GARDNER: Excuse me, Mr. Hicks. Did you say manual?

MR. OLDHAM: Sergeant manual.

MR. GARDNER: Is this a person?

MR. OLDHAM: No, no. It's a book.

QUESTIONS BY MR. OLDHAM:

Q. He had asked you about the manual that the sergeants have?

A. Yes, earlier when I first came in.

And I explained to him it was in my other vehicle, and that I didn't have it.

But he followed me outside the door.

He was trying to get me to start a fight with him, and I wouldn't.

He kept stepping on the heels of my shoe.

And I kept hollering through the window at Beverly Walter, the Control Center Officer, to let her know I had authorization to leave.

And he kept cutting me off, he wouldn't let me go out the door.

Q. All right.

What there anybody else present at that time?

[1-72]

A. Yes. Horace Williams.

Horace Williams saw him when he was trying to get me, you know, fight with him.

And Horace Williams grabbed him, and said, "Come on," he told him, you know, "he's fixing to go, so let him go out the door."

Q. Did you then leave the institution?

A. Yes.

Q. Did Captain Powell ask you to do anything in particular —

A. Yes.

Q. — with regard to a locker?

A. Yes.

He was shouting loud and belligerant [sic] for me to open my locker.

Q. Now, where was your locker?

A. My locker, I guess was about from here to the door (indicating), to the locker room.

Q. Then there is a locker room where you go inside, isn't there?

A. Yes, it is.

Q. Is that distance 60 or 70 feet?

A. Okay.

Q. Why didn't you go back to your locker room?

A. Well, I knew if I went back there, it probably [1-73] would have been a fight, because I was angry and Captain Powell was angry, too, and he kept provoking me.

Q. Were you getting hot under the collar?

A. Yes, I knew I was.

And I got clearance from Mr. Long to leave, so that's what I did.

Q. All right.

Now, there is an allegation that you invited Captain Long outside.

What is your response to that?

A. No. I didn't invite him.

I couldn't believe what he was doing.

He came to as a shock to me.

So, I asked him, I said, "Hey, you're a man and I am a man. Hey, you don't have to treat me like that, you know, treat me like a man."

Just like that.

And he kept looking at me, laughing in my face.

So, I asked him, "What are you trying to do, provoke me and make me fight you?"

And he said yes.

And during time, Horace Williams still, you know, was in between of us, because Captain Powell was so close to me, and I couldn't go out of the door, because he kept cutting me off.

[1-74]

So Horace, you know, walked me out of the door.

Q. Did you come close to blows at that time?

A. Yes, we did.

Q. But you did leave without getting in any physical altercation?

A. Right.

Q. Did you raise your voice to Captain Powell when he raised his voice to you?

A. No. I didn't.

Q. Okay.

But there was some noise?

A. Yes, there was.

Q. And Mr. Williams was present during most of this?

A. Yes.

* * *

MELVIN HICKS — CROSS EXAMINATION

[1-86]

BY MR. GARDNER:

Q. Mr. Hicks, when you had the argument with Captain Powell on the day you learned of your demotion, Captain Powell directed you that day to open your locker, didn't he?

A. That was after the argument, yes, during the argument.

Q. During the argument, he gave you an order to open your locker for him?

A. That's right. Yes.

Q. And you refused to do that, is that right?

A. Before I left.

Q. Before you left, you refused to do that, didn't you?

A. No, I didn't.

Q. Did you open your locker for him?

A. No.

Q. Did Captain Powell direct you, during that argument, to tell him which locker was yours?

A. Yes.

Q. Did you tell him which locker was yours?

A. No, I didn't.

* * *

HORACE WILLIAMS — DIRECT EXAMINATION

[1-169]

HORACE WILLIAMS, PLAINTIFF'S WITNESS, SWORN:

DIRECT EXAMINATION

QUESTIONS BY MR. OLDHAM:

Q. Would you state your name, please?

A. Horace Williams.

* * *

[1-174]

Q. Mr. Williams, did you observe any difficulties that Mr. Hicks and Captain Powell were having?

A. Yes. Yes, I did.

Q. On more than one occasion, or just one occasion?

A. I recall the incident —

I recall the incident where I think Hicks had come in for a hearing that day.

And I recall that incident, because I was standing up at the Control Center at that particular time.

Q. Now, the meeting took place in Mr. Banks' office, did it not?

A. I believe it was Mr. Schultz's office at that time. It was back in the back.

I think it was Steve Long's office — if my memory [1-175] serves me correct.

Q. Okay. All right.

Now, when did you first become aware —

What did you first see that drew your attention to the situation?

A. I noticed Melvin coming down the hallway, and I noticed Captain Powell walking behind Melvin.

Q. How close was he to him?

A. Maybe about three or four steps behind him.

Q. All right.

A. And I could overhear a conversation, but I couldn't make out the conversation.

It appears from the distance, as they were walking toward me, that it was unpleasant conversation being taking place.

So, as Melvin approached the Control Center where I was standing, and he indicated to the person who was working the Control Center that day, to buzz him out, because he was attempting to leave the building.

Q. What did Captain Powell do when he attempted to leave the building?

A. Captain Powell proceeded outside of the — outside of the gate, into the air lock behind Melvin.

And they were standing —

Q. Was he blockin [sic] his way?

[1-176]

A. I can't say for sure.

Q. But he had to pass Melvin to get out into the other area?

A. It's a narrow area. It's a pretty small area.

So, he would have to pass in order to get out.

Q. All right.

Just describe what transpired at that time, what you heard.

Well, could you hear what they were saying at that point?

A. I overheard Melvin say to the person who was working in the Control Center to sign him out.

And Captain Powell indicated to the individual who was working in there to sign him out on some other kind of leave.

I don't recall the leave that Captain Powell said.

But Melvin said, "No, sign me out on — sign me out, because I am going home sick," or under stress or something to that point.

And Captain Powell indicated something to Melvin as to supervisors manual.

And Melvin indicated that was in his locker.

And Captain Powell was asking — they was going back and forth about the manual.

And Melvin also indicated that was in his locker. [1-177] So they went on about that.

So, at that time, at that time I think Melvin indicated something again to the Control Center.

And so I think Melvin made the statement to Captain Powell that, you know, if he was a man that man didn't solve their problems like this.

So, I could see the situation was getting out of hand. So I indicated to Melvin, "Come on, let's go on outside of the building before things get worse."

Q. Did you then grab ahold of Melvin, and escort him out?

A. Yes, I did.

Q. Okay.

Did Captain Powell raise his voice during this period of time, or could you describe his tone of voice?

A. It was loud. Both of them was kind of loud.

Q. Okay.

Did you hear Mr. Hicks make any threats to Mister — to Captain Powell there, saying they were both men they ought to settle it something like men, something like that?

MR. GARDNER: Objection. It calls for a conclusion of what a threat is.

THE COURT: I think he posed what he thought about it, the question itself.

[1-178]

Why don't you rephrase your question?

MR. OLDHAM: All right.

QUESTIONS BY MR. OLDHAM:

Q. Have you told us everything you can remember about what was said between the parties?

A. Yes, I have.

Q. All right.

You were concerned that there might possibly be some physical altercation at this point, is that correct?

A. True.

Q. Did Mr. Hicks then leave?

A. Yes, he did.

* * *

HORACE WILLIAMS — CROSS EXAMINATION

[1-181]

QUESTIONS BY MR. GARDNER:

* * *

Q. Mr. Williams, you testified before a hearing [1-182] officer of the Missouri Personnel Advisory Board in an appeal that Mr. Hicks brought of his demotion and his dismissal, didn't you?

A. Yes, I did.

* * *

MR. GARDNER: The document I am using is the transcript of the Personnel Advisory Hearing, which is Defendant Long Summary Judgment Motion Exhibit C.

[1-183]

THE COURT: Then I suggest that you read the question that was asked of him, and the answer that was given.

QUESTIONS BY MR. GARDNER:

Q. It was page 162, line 2, actually the last line of page 161.

Do you remember being asked the question:

"Did you hear any threats made or anything by Mr. Hicks towards Captain Powell?"

And do you remember giving the answer:

"What I heard was that Melvin stated to him that, 'He was a man, and that men didn't settle their differences or problems that way,' something to that effect"?

A. Yes, I did.

Q. You testified that way?

A. Yes, I did.

Q. Okay.

You also testified at the Disciplinary Board Hearing at St. Mary's Honor Center now, concerning the incident between Mr. Hicks and Mr. Powell on May 9, 1984. Do you remember testifying there?

A. I can't recall, but if —

Q. Let me ask you this:

Do you remember being questioned by anyone at St. [1-184] Mary's Honor Center whether Mr. Hicks made this statement to Mr. Powell:

"Any time you feel like a man, just step out in the street."

A. I can't recall.

Q. Okay.

The room in which the meeting was had before the confrontation, wasn't it right outside the Control Center?

A. I can't recall.

When I noticed Melvin and Captain Powell, they was coming down the hallway.

Q. Okay.

Did you see Mr. Hicks stepping on any heels — or Mr. Powell stepping on Mr. Hicks' heels?

A. He was about three to four steps behind him.

No I did not see him stepping on any heels.

Q. Didn't see any physical contact between the men?

A. No, I did not.

Q. Okay.

- You heard, I take it, Mr. Hicks say that the manual was in his locker?

A. Yes, I did.

Q. Okay.

Did you hear Captain Powell ask him to open his locker for him?

[1-185]

A. Yes, I did.

Q. Did Sergeant Hicks comply with the request?

A. No, he did not.

Q. Did you hear Captain Powell ask Mr. Hicks to point out which locker was his?

A. He may have. I didn't hear it.

Q. Okay.

Did you see Sergeant Hicks point out any locker that he said was his?

A. No, I did not.

* * *

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

(Title omitted in printing.)

VOLUME 2
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE STEPHEN N. LIMBAUGH

* * *

JOHN POWELL — DIRECT EXAMINATION

[2-3]

* * *

JOHN POWELL DEFENDANT'S WITNESS, SWORN:

DIRECT EXAMINATION

QUESTIONS BY MR. GARDNER:

Q. State your name, please.

A. John Powell.

* * *

[2-14]

* * *

QUESTIONS BY MR. GARDNER:

Q. I am going to show you M and N, and identify M and N for me.

A. M is a directive from Sergeant Melvin Hicks to me, dated February 27, 1984, regarding his shift change.

Q. Did Mr. Hicks make a request in the directive?

A. Yes, he did.

He requested that he and Sergeant Wilson be allowed to switch shifts.

Q. Okay.

What is Exhibit N?

A. Exhibit N is a directive from me to Sergeant Melvin [2-15] Hicks regarding his shift change request.

It's dated February 28, 1984.

Q. And how did you respond to Mr. Hicks' request for a shift change?

A. Well, I had to deny his request to trade.

It was Superintendent Long's feelings that each Shift Commander would rotate.

And this was to give them knowledge of the complete responsibilities of the institution, as well as give each subordinate officer a change to work with each supervisor to gain the full benefit of all knowledge from the supervisors.

* * *

[2-32]

Captain Powell, I want to ask you about April 27, 1984, a meeting concerning Mr. Hicks' demotion.

Did you have a meeting with Mr. Hicks and any other people concerning his demotion?

A. Yes.

I was present in Assistant Superintendent Vincent Banks' office when Superintendent Long, who was also present, informed Mr. Hicks of his demotion.

Q. Okay.

What was Mr. Hicks' reaction?

A. Schucks. He became withdrawn.

Q. Did he make a request at that time?

A. Yes, he did.

Q. What was it?

A. He requested that he be allowed to go home, as he didn't think he would be able to perform his duties.

Q. Okay.

Did anyone authorize him to do so?

A. Mr. Long authorized him to leave.

Q. Okay.

And then did Mr. Hicks leave?

A. Yes, he did.

Q. What did you do after that?

A. Upon him leaving the room, I realized that he had the Shift Commanders manual that we would need for his [2-33] relief or replacement, what have you.

The relief would need that to perform their duties.

It would have the post orders, it would have had the rosters, time and attendance reports, and everything that they would need to perform the duties of their shift.

Q. Once you realized he had that manual, what did you do?

A. I left Mr. Banks' office, and went out to where Mr. Hicks was standing at the Control Center, and asked him if I could get the manual.

Q. And what was his reply?

A. He became hostile; wanted to argue about it.

And stated he didn't have the manual, and wasn't going to give me the manual.

He was very loud with it.

Q. Okay.

Did you ask to — ask Mr. Hicks to open his locker for you?

A. Yes, I did.

Q. Why did you do that?

A. Because the Shift Commanders kept their manuals in the locker.

Sergeant Hicks had kept his manual in the locker, as I had seen him take it out of the locker many times.

Q. Okay.

[2-34]

A. He would go to the locker, and he would come back with it.

Now, I didn't see which locker at the time that he kept it in.

But I do know he would go to the locker area, and he would come back with the manual.

Q. Did he open his locker for you?

A. No, he did not.

Q. Okay.

Did you ask him which locker was his?

A. Yes, I did.

Q. Did he tell you?

A. No, he did not.

Q. Okay.

Did you ever get the shift manual from Sergeant Hicks that day?

A. No, I did not.

Q. Okay.

Did you ever look in the lockers for the shift manual that day?

A. Yes, sir, I did.

Q. How did you get in the lockers?

A. We had to cut the locks on some of the lockers.

At the time the lockers were issued to the staff, they were instructed that should they put a personal [2-35] padlock on that, they would provide the institution with a key, so that we could periodically inspect all lockers, which was a policy of the department.

Q. Okay.

Did you find the shift manual after your search?

A. No, I did not.

Q. Okay.

Was anybody present with you at the Control Center when you had the discussion about the lockers?

A. The Control Center officer, which was Waller, I believe, Beverly Waller.

There were some inmates standing around, and I believe Mr. Horace Williams was standing over by the stairwell.

Q. Mr. Hicks angry?

A. Yes, he was.

Q. Were you angry?

A. No, I wasn't.

I was upset that he would not give me the manual.

As far as being angry, no, I was not.

Q. Was he loud?

A. Yes, sir, he was.

Q. Were you loud?

A. No, sir.

Q. Okay.

[2-36]

Mr. Hicks make a statement to you that you took exception to?

A. Yes, sir, he did.

Q. What did he say?

A. He wanted me to go out to the street with him.

Q. Okay.

What happened after that statement was made?

A. I told him that that could be misconstrued as a threat.

And he left the institution then, so —

Q. Was there any conversation about what type of leave he should sign out under?

A. He told the Control Center officer to sign out that he was sick, that he was under too much stress.

I believe that was all that was said on that.

Q. Okay.

Did you say anything about the type of leave he should sign out under?

A. No, I did not.

Q. Did any of this discussion occur further down the hallway?

A. It started at the front of the Control Center, and then Mr. Hicks moved around to the side to actually sign out.

And that's when he told me that he wanted me to [2-37] step outside with him.

And I went to him and told him that that can be misconstrued as a threat.

* * *

[2-39]

* * *

I am going to show you Plaintiff's Exhibits 4 and 5, and ask if you have seen them before.

A. Yes, I did.

Q. Okay.

They are concerning Treglown and Perkins wanting to change shifts?

A. Yes, sir.

Q. Okay.

What were their ranks?

A. They were Corrections Officer 1's.

A. And did you permit those people to change shifts?

A. Yes, I did.

[2-40]

Q. Why is that?

A. As Corrections Officer 1's, in their positions, Superintendent Long felt that that would be permitted, should they have reason to need a specific shift or duty hours, and there was another person of the same rank willing to trade duty responsibilities, duty shifts, that he felt that we could allow that.

Q. Was there anybody of Sergeant Hicks' rank who could change shifts with him?

A. I believe he requested to change with Sergeant Wilson.

I don't recall Sergeant Wilson submitted anything that he wanted to trade.

Q. Okay.

And if he wanted to trade, would the trade have been allowed even?

A. No, sir.

Q. Why is that, again?

A. Again, Superintendent Long had states that he wanted the Shift Supervisors to rotate on a regular basis, so that they would all have a full knowledge of the entire institution on a 24-hour basis.

And it would also allow their subordinates to gain the knowledge of each one of the supervisors.

* * *

JOHN POWELL — CROSS-EXAMINATION

QUESTIONS BY MR. OLDHAM:

[2-82]

* * *

Q. Let me ask you about if a Correctional Officer 1 curses the Staff Commander, would that be a violation of anything?

A. It would be insubordination.

Q. All right.

What is the penalty for insubordination?

A. That can range, depending on the circumstances involved, from verbal on up to time off.

Q. For example, if a Correctional Officer 1 used the term mother fucker, and fuck you to a Staff Commander, would that be considered to be an insubordinate activity.

A. If it proved to be a fact, yes.

Q. All right.

You received this complaint, did you not?

[2-83]

A. Yes, sir, I did.

Q. And did you conduct an investigation?

A. In that I spoke with Officer Turney. I checked his past performance appraisal.

I checked over the performance appraisal that Sergeant Hicks had submitted to him.

And from that investigation, I determined that, indeed, it didn't match.

Q. Well, I am talking about not what the service rating, I am talking about the verbal abuse or verbal statements.

A. Okay.

And per Officer Turney, he had stated he wasn't going to sign the goddamn thing.

Q. Okay.

A. Okay.

So, now you have —

Q. So, there was a dispute as to what occurred, is that right?

A. Yes, sir.

Q. In a situation like that, under a custody situation like you have, a chain of command and so on and so forth, do you support your Shift Commander, or do you support the subordinate?

A. That depends on the circumstances involved, and as [2-84] to who is actually instigating the situation.

Q. Did you determine that Officer Hicks had instigated a situation?

A. I felt that with the appraisal that he submitted to Officer Turney, yes, he did.

Q. All right.

A. It did provoke him some.

Q. So the fact that Officer Hicks provoked him by writing something on the evaluation that didn't make it as high as he thought it would be, or something like that, was sufficient grounds for the reaction that he had?

A. For him to make the statement, "I am not going to sign the goddamn thing," yes, I probably would have said the same thing.

But that isn't cursing the supervisor.

Q. So, if a superior provokes the situation, that has to be taken into consideration?

A. Yes, sir.

Q. All right.

Now, let me get to your situation with Mr. Hicks.

A. All right, sir.

Q. Now, you stated that Mr. Hicks was called in and demoted on April the 27th?

A. Yes, sir.

Q. That that time, you gave him a new post order for — [2-85] as a Custodial Officer 1, did you not?

A. I believe that was on the same date.

Q. Okay.

And did that custodial order assign him custodial duties?

A. Yes, sir.

Q. Now, that had never been assigned to a front door officer before, had it?

A. No, it didn't, it hadn't.

Q. This is brand new for Officer Hicks, wasn't it?

A. Yes, sir.

Q. All right.

Now, here we have a person who has been a sergeant for four or five years, four years, who had a good record prior to your appearance, and you assign him menial duties.

Isn't that what happened?

A. Yes, sir.

Q. And you indicated that you knew Officer Hicks was disturbed and upset?

A. Yes, sir.

Q. And he asked for permission to go home, because of the fact that he was emotionally disturbed?

A. Yes, sir.

Q. And you were aware of that?

[2-86]

A. Yes, sir.

Q. And you were aware that he was given permission to leave?

A. Yes, sir.

Q. And yet you followed him out as he was leaving?

A. Yes, sir.

Q. Your testimony is that you spoke in a quiet, soft voice?

A. Yes, sir.

Q. Did nothing to provoke him, other than just quietly ask him for his manual?

A. That is true, sir.

Q. I think you testified on direct examination to seeing Mr. Hicks get the manual out of his locker.

And then you changed that?

A. Yes, sir, I did change that.

I have never seen him in his specific locker.

What I have seen — or had seen in the past, was him go back to the locker area, and then come back with his manual for conducting —

Q. Actually, didn't he carry that manual back and forth with him all the time?

A. Not to my recollection.

Q. All right.

Anyway, he was trying to sign out, and you moved [2-87] around in front of him, and talked to him, didn't you?

A. I moved around to position myself between him and the inmate that were available, because I didn't want them involved in the situation.

Q. He was going out the door, wasn't he?

A. He was in the front of the Control Center.

Q. And he was getting ready to go out the door?

A. He would have had to come from this side around to this side, to finish signing out, and go out the door.

Q. All right.

So you got in between him en route, didn't you?

A. Yes. There was inmates that was standing back by the stairwell there.

So, I was behind him —

Q. If you let him go on out, he would have gone, isn't that true?

A. That is true.

Q. And you say you didn't think that was any action of provoking a situation —

A. No sir.

I did not leave that office to provoke Sergeant Hicks.

Q. You knew that there had been difficulties between you and Officer Hicks, had been for some time, since March?

[2-88]

A. I can't say that there was difficulties between he and I.

At no time was there any kind of personal —

* * *

[2-99]

* * *

STEVEN LONG — DIRECT EXAMINATION

QUESTIONS BY MR. GARDNER:

Q. Please state your name for the record, sir.

A. Steve Long.

Q. Mr. Long, how are you employed at this time?

A. I am the Assistant Director, Division of Adult Institutions, Department of Corrections.

Q. For the State of Missouri?

A. That's correct.

Q. When did you become the Assistant Director?

A. About four years ago.

Q. Okay.

And that would put us back to 1986?

A. Right. I believe September of '86, August of '86.

Q. Prior to September of 1986, were you employed with the Department of Corrections?

A. Yes, sir.

Q. And what capacity?

Immediately prior to that.

[2-100]

A. Most immediately prior, I was Superintendent of the Farmington Correctional Center.

Q. And prior to Superintendent at Farmington, were you employed with the Department in any way?

A. I was the Superintendent of the Missouri Eastern Correctional Center.

MR. OLDHAM: Superintendent of what?

THE WITNESS: Missouri Eastern Correctional Center.

QUESTIONS BY MR. GARDNER:

Q. And prior to the Superintendent there, were you employed with the Department in any way?

A. Yes.

Superintendent at St. Mary's Honor Center.

Q. What period of time were you the Superintendent at St. Mary's Honor Center?

A. From, I believe it was January of '84 to mid '85.

* * *

STEVEN LONG — CROSS-EXAMINATION

QUESTIONS BY MR. OLDHAM:

[2-151]

* * *

Q. Who was the Shift Commander when this fellow, Lee, escaped?

A. I am not sure, sir.

Q. Could I refresh your memory that it was Sharon Hefelee, would that refresh your memory at all?

A. It is very possible.

I know she was there at the time of the escape.

Q. That was her regular shift, wasn't it?

A. I think it was her shift at that time.

Q. Pardon?

A. I think it was her shift at that time.

Q. During this period of time, how often did you rotate shifts?

[2-152]

A. I don't think we had a formal rotation period.

Q. You didn't?

A. I don't recall one.

* * *

[2-175]

GEORGE LOMBARDI — DIRECT EXAMINATION

* * *

QUESTIONS BY MR. GARDNER:

Q. Would you state your name for the record, please?

A. George Lombardi.

Q. Mr. Lombardi, how are you employed at this time?

A. I am employed with the Department of Corrections.

Q. In what capacity?

A. I am Director of the Division of Adult Institutions.

Q. How long have you held that position, and when did you begin holding it?

A. I began the position in June 1986.

Q. Okay.

Prior to that time, did you have a position with the Department of Corrections?

A. Yes.

Q. What was that position?

A. I was Assistant Director of the Division of Adult [2-176] Institutions.

Q. And when did you begin holding that position?

A. In April 1983.

Q. And as Assistant Director of the Division of Adult Institutions, tell us your duties.

A. My duty was to supervise, I believe, seven or eight of the state penal institutions in the Division of Adult Institutions.

Q. Okay.

Was St. Mary's Honor Center one of them?

A. Yes, it was.

* * *

[2-197]

* * *

GEORGE LOMBARDI — CROSS-EXAMINATION

QUESTIONS BY MR. OLDHAM:

Q. Mr. Lombardi, isn't it true that you were at Tipton at one time or another?

A. Yes.

Q. Isn't it true that Mr. Davis was up there writing this report?

Mr. Davis was up there at your facility, studying the facility, while you were there?

A. No.

Q. It's not true?

A. Not to my knowledge.

Q. If he were there, you would know about it, wouldn't you?

A. If I was there and he was there, I would have known about it.

Q. What period of time were you at Tipton?

A. November 1976 to August 1979.

* * *

[2-202]

* * *

You came down here I guess in September, October of 1983 to investigate the situation?

A. In late 1983.

Q. Right.

And you were disturbed about the way Mr. Schulte was running the institution?

A. Yes.

Q. He was the chief officer down here, wasn't he?

A. Yes, he was.

Q. Wasn't he the one that would be responsible for any difficulties?

Wasn't that his responsibility as the Superintendent at the institution?

A. The Superintendent is ultimately responsible for the management of his facility.

Q. All right.

And did you sit in on any Disciplinary Boards in December and January?

Did you sit in on any of the Disciplinary Boards in December and January, when there were firing a bunch of people?

A. No.

Q. Now, as I remember, Mr. Schulte was demoted and transferred, right?

[2-203]

A. That's correct.

* * *

[2-204]

As a Superintendent, you're more responsible for that institution than the Correctional Officer?

A. I think your span of control over the operation is certainly greater.

Q. All right.

And it was the control of the operation that concerned you, wasn't it?

A. Are you talking about now Mr. Schulte —

Q. Yes, during Mr. Schulte's period.

A. Certainly.

Q. You had meetings with him, didn't you?

A. Yes.

Q. And you told him of things that you wanted done, and you wanted corrected?

A. Yes.

Q. And you gave him a period of time to make those corrections, didn't you?

A. Yes.

Q. And after a period of time, he hadn't made those corrections?

A. Correct.

Q. And you had another meeting with him, and stressed upon him the seriousness of the situation?

A. Yes.

Q. And you came back again on an unannounced visit, [2-205] and nothing had improved?

A. Yes.

Q. And you then made recommendations for disciplinary action, didn't you?

A. I made recommendations that that consideration be given to disciplinary action.

Q. Okay.

And who did you make those recommendations to?

A. To the Director of the Division of Adult Institutions, Donald Wyrick.

Q. That would be Mr. Wyrick at that time?

A. Yes.

Q. And he was the person that had the responsibility for making the final decision?

A. Correct.

Q. Would it be fair to say that Mr. Schulte had let the institution go to pot?

A. In the areas I mentioned.

Q. Okay.

And after he was warned, given two warnings, and told to correct it, and hadn't corrected it, and finally disciplinary action was taken?

A. That's true.

Q. Would it be fair to say that you advised him that if he didn't make these corrections, that something would [2-206] be done about it?

A. I am sure those terms were either inferred or implied.

Q. All right.

And isn't that what your disciplinary action calls for?

A. Excuse me?

Q. Your disciplinary procedures call for him to be notified that if something is wrong, he should correct it; if he doesn't correct it, then disciplinary action will be taken?

A. There is nothing specific that says that a person must be notified.

Q. Okay.

Q. But at least you notified Mr. Schulte about the problems?

A. Yes.

Q. And you gave him two opportunities to correct it?

A. That's true.

Q. And when he didn't, then you demoted him and transferred him.

Did he lose any salary as a result of that, do you know?

A. Yes.

Q. He still works for the Division of Corrections?

[2-207]

A. Yes.

Q. Where is he now?

A. He is Assistant Superintendent of the Fulton Reception and Diagnostic Center.

* * *

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

(Title omitted in printing.)

VOLUME 3
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE STEPHEN N. LIMBAUGH

* * *

[3-2]

* * *

VINCENT BANKS — DIRECT EXAMINATION
VINCENT A. BANKS, PLAINTIFF'S WITNESS, SWORN:

DIRECT EXAMINATION

QUESTIONS BY MR. OLDHAM:

Q. Would you state your name, please?

A. Vincent A. Banks.

Q. Mr. Banks, where are you employed?

A. St. Mary's Honor Center.

Q. What is your position there?

A. Superintendent.

Q. How long have you been Superintendent at St. Mary's Honor Center?

[3-3]

A. Since October 1985.

Q. Prior to that, where did you work?

A. St. Mary's Honor Center.

Q. How long have you been at St. Mary's Honor Center?

A. April 1st, 1978.

Q. Up until the present time, then.

What positions have you held at the Honor Center?

A. Assistant Superintendent and Superintendent.

Q. So that you have been either Assistant Superintendent or the Superintendent since 1978?

A. Yes, sir.

* * *

[3-13]

* * *

Q. Now, do you have a roster with you from April of '84?

A. Right.

Q. All right.

Is this a roster prepared by who, if you know?

A. Captain John Powell.

Q. Okay.

And this would be in custody only, right?

A. Right.

Q. Could you read down the list, and tell me what happened, give the race, and tell me what happened to each one of these?

[3-14]

* * *

THE WITNESS: Well, the first name, John Powell was the captain.

Sharon Hefelee was a sergeant.

Melvin Hicks was a sergeant.

QUESTIONS BY MR. OLDHAM:

Q. I need you to give the race.

A. Okay, I am sorry.

John Powell, white.

Q. What happened to Mr. Powell?

A. He transferred to Pacific, from Pacific, he is a captain now down in Potosi.

Q. Next person?

A. Sharon Hefelee, white.

Q. What happened to her?

A. She's a captain down in Farmington.

Q. She transferred to Farmington.

Next person?

A. Melvin Hicks, CO-2.

Q. He is black?

[3-15]

A. Black.

Q. What happened to him?

A. He was terminated.

Q. Next person.

A. James Wilson.

Q. He is white?

A. White. CO-2.

He was transferred.

He was recommended to be terminated, but because of his number of years, about 15 years, he was not terminated at that time.

He was transferred to MSP.

Q. What was Mr. Wilson's problem.

I mean you said there was a recommendation for termination, but he wasn't terminated.

A. He was a problem at the institution.

Q. He was what?

A. Personal problems.

He got involved with other inmates and other staff.

Q. Okay.

How about Mister — who is the next one?

A. George Ackles.

Q. What race is he?

A. Black.

Q. What happened to him?

[3-16]

A. He was terminated.

Q. The next person?

A. George Baker. Black.

Q. What happened to him?

A. Terminated.

Q. Next person.

A. Paul Crowe.

Q. What race?

A. White.

Q. Where is he?

A. If I am not mistaken, he is at Farmington, a lieutenant down at Farmington.

Q. Next person?

A. Jimmy Davis.

Q. What race?

A. Black.

Q. What happened to him?

A. Got fired.

Q. Next person?

A. Michael Doss.

Q. What race?

A. White.

Q. What happened to him?

A. He resigned.

Q. He resigned.

[3-17]

How about the next one?

A. George Evans.

Q. What race?

A. He had a stroke and died?

Q. Was he white?

A. White.

Q. Okay.

Next person?

A. William Garrett.

Q. What race was he?

A. Black.

Q. What happened to him?

A. Resigned.

Q. He resigned.

A. He resigned.

He resigned just about a year ago.

Q. So, his resignation was something fairly recent?

A. Yes.

Q. How about the next person?

A. Charles Kennedy.

Q. What race?

A. Black.

Q. What happened to him?

A. Terminated.

Q. Next person?

[3-18]

A. Don Moore.

Q. Race?

A. Black.

Q. And where is Mr. Moore?

A. Resigned.

Works at the Chevrolet plant.

Q. Went to work at the Chevrolet plant?

A. Out at Wentzville.

Q. Okay.

Had he worked at the Chevrolet plant before?

A. No.

Q. Okay.

Next person?

A. Lee Mozee.

Q. What was his race?

A. Black.

Q. What happened to him?

A. He was promoted to Superintendent 1, and right now he is on disability.

Retired, disability.

Q. Next person:

A. Curtis Perkins.

Black.

Transferred.

Q. Next person?

[3-19]

A. Edward Ratliff.

Q. What happened to him:

A. He is at Pacific.

Lieutenant.

Q. He was white?

A. White male.

Q. He was promoted to lieutenant?

A. Through the ranks.

Q. Next person?

A. Frank Slinkard.

Q. Is he white?

A. White.

Q. What happened to him?

A. He resigned.

Q. Next person.

A. Donald Smith. Black.

He is still working there.

Q. All right.

Next person?

A. David Schuman. Black.

Q. What happened to him?

A. Terminated.

Q. Next one, Elvis Thomas?

A. Elvis Thomas. Black.

Q. What happened to him?

[3-20]

A. He resigned about five months ago.

Now he is asking to be reinstated to come back.

Q. Next person?

A. Don Treglown.

Q. What race is he?

A. White.

He is a sargeant[sic] down in Farmington.

Q. Mr. Turney?

A. Arthur Turney, I didn't see those papers.

You said he was terminated in '84.

White.

Q. Next person?

A. Lillian Walls.

Q. What race was she?

A. Black.

Q. What happened to her?

A. She was promoted CCA, and under my administration, we terminated her this past July.

Q. So, she remained there until July of this past year?

A. Until July of this past year.

Q. The next person, Keith Smith?

A. Black. And resigned.

Q. Next person?

A. Ron Ramey. Resigned.

[3-21]

Q. That was the custodial force?

A. That was the roster.

Q. In April of '84?

A. Right.

* * *

VINCENT BANKS — CROSS-EXAMINATION

QUESTIONS BY MR. GARDNER:

* * *

[3-29]

As Assistant Superintendent at St. Mary's, what did your duties include?

A. At that time, over all of the food section, and classification, which was case workers and the inmates that work with these programs.

Q. Didn't include any custodial responsibilities?

A. No. That was under the Superintendent.

Q. Okay.

A. Mr. Long.

* * *

[3-46]

VINCENT BANKS — RECROSS-EXAMINATION

* * *

Q. Who is the Assistant Director of the Division of Adult Institutions now, which has the Honor Center within his —

A. As far as I know, Steve Long.

Q. Steve Long?

A. Steve Long, yes, sir.

Q. And Steve Long, has, doesn't he, now, some hiring review function for people at St. Mary's Honor Center?

A. Yes, sir.

Q. Tell me the levels of —

Well, he reviews custody people to be hired at St. Mary's Honor Center, doesn't he?

A. The CO-1s, they are hired directly out of Jefferson City central office.

Q. Does Mr. Long have any connection with hiring CO-1s?

A. Not CO-1s, no.

Q. How about CO-2s, or sergeants?

A. CO-2s and sergeants are my recommendation.

Q. Pardon me?

A. My recommendation, my recommendation only.

[3-47]

Q. To Mr. Long?

A. My recommendation, though.

Q. My question is:

Does Mr. Long have any input now in the hiring of —

A. No, not of sergeants.

Q. Okay.

What about lieutenants?

A. Lieutenants, yes.

Q. And what about captains?

A. He has to approve it.

* * *

[3-49]

* * *

Q. So, Mr. Long is aware of every hiring decision?

A. He's aware, right, except CO-1s, and clerk typists.

Q. Except CO-1s and clerk typists?

* * *

VINCENT BANKS —RE-REDIRECT EXAMINATION

QUESTIONS BY MR. OLDHAM:

Q. I am just a little bit confused.

As I understand, you're the one that recommends the CO-1s?

A. Not CO-1s.

They come directly from Jefferson City.

They have a central pool.

Q. They come directly from Jefferson City.

THE COURT: Nobody at the Honor Center has anything to do with the hirings of CO-1s?

THE WITNESS: No, sir.

* * *

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

(Title omitted in printing)

**JAMES DELBERT DAVIS —
DEPOSITION TESTIMONY**

* * *

[3]

* * *

DIRECT EXAMINATION BY MR. OLDHAM:

Q. Would you state your name, please.

A. My name is James Delbert Davis.

* * *

[4]

* * *

Q. All right. Mr. Davis, I want to ask you some questions about a study you did of the Honor Center's program in Missouri back in 1981, and in order to do that, I need to get a little history on yourself.

* * *

[5]

* * *

Q. Where are you employed at the present time?

A. I work for the Missouri Department of Mental Health.

* * *

Q. Okay. Did you at one time work for the Department of Social Services?

A. Yes, I did.

* * *

A. At that time the corrections was a division of the Department of Social Services.

Q. Okay. What was your position?

A. I was a Planner 2.

Q. At that time:

A. Yes.

Q. Could you describe just briefly your responsibilities as a Planner 2?

A. To do research and evaluation and review [6] legislative proposals having to do with the Division.

Q. Okay. Now, did you at any time or were you at any time assigned to do an evaluation of the Honor Center's program of the Missouri Division of Corrections?

A. Yes, I was.

Q. And who assigned that to you?

A. That would have been Harvey Morton.

Q. What was his position?

A. He was the Director of State Planning.

* * *

Q. And is a Director of State Planning a high ranking position within that department?

A. It was immediately under the Division Director.

Q. And who would that be?

A. That was Dennis Eskina.

* * *

[7]

* * *

A. And Mr. Morgan worked under Mr. Eskina, and I worked under Mr. Morgan.

Q. Did you have any conversations with anybody other than Mr. Morgan at the time you were assigned to do this job?

A. It was done at the request of Mr. Riley from the Division of Corrections, and Mr. Morgan and myself discussed it with Mr. Riley and Merna Trickey.

Q. All right.

A. Mr. Riley was the Deputy Director of the Division of Corrections, and Merna Trickey worked under him.

* * *

[10]

* * *

Q. When you finished your analysis or study, who did you turn it in to?

A. Mr. Morgan.

Q. And do you know whether or not Mr. Riley ever received it?

A. Yes, he did.

Q. After it was completed, did you discuss it with Mr. Riley?

A. Yes.

Q. Anybody else at a high level that you discussed it with in the Department of Corrections?

A. Mr. Morgan and Mr. Eskina and myself went to Mr. Riley's office and discussed it with him and Mr. Blackwell who, at that time, was the director of the Division of Corrections.

Q. Would this have been some time after April 15th, 1981?

A. Sometime within a month or so, I would say.

Q. All right. So it would have been probably May of 1981 that you'd met with Mr. Blackwell and Mr. Riley and Mr. Morgan and Mr. Eskina?

A. Yes.

[11]

* * *

Q. Could you tell me what was said about your evaluation by Mr. Blackwell and Mr. Riley?

A. Both said that they were happy with it, that it was—they were impressed with the detail that I'd been able to gather in a relatively short period of time and—

Q. Now, as I understand it, you spent about seven days at each of the Honor Centers?

A. Yes, uh-huh.

Q. And during that seven days, you observed the Honor Centers, and your comments and results of your observation are contained in your evaluation?

A. Yes.

Q. Do you have a copy of that evaluation with you?

A. Yes, I do.

MR. OLDHAM: Could we have it marked as Deposition Exhibit—I guess Davis Deposition Exhibit 1.

(DAVIS DEPOSITION EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION BY THE REPORTER.)

[12]

BY MR. OLDHAM:

Q. Mr. Davis, let me hand you what's been marked as Davis Deposition Exhibit No. 1 dated 3/10/89 and ask you if you can identify that document.

A. Yes. This is the report of the process analysis that I had done.

Q. Does it contain 93 pages, plus seven pages of recommendations?

A. Yes, it does.

Q. And did you prepare this document as part of your responsibilities and duties as a Planner 2 in the Department of Social Services—

A. Yes, I did.

Q. — of the State of Missouri? And was this done in the regular course of your business and your responsibilities?

A. Yes.

* * *

Q. Can you give me an outside figure of how many copies were made?

[13]

A. How many copies were made in my office? That's all I would have knowledge of. At least I'd say probably ten or 12.

Q. Ten or 12?

A. Uh-huh.

Q. Okay. And you have indicated they were distributed to various individuals including Mr. Blackwell who was the head of the Division of Corrections at that time?

A. Yes, uh-huh.

Q. And also to Mr. Eskina who was a director of planning?

A. Yes.

Q. And to a Mr. Morgan who was also in the planning section?

A. Yes, uh-huh.

Q. Do you know whether Mr. Freeman received one?

A. I have no—

Q. Other than those individuals we've mentioned: Morgan, Eskina, Riley, and Blackwell, do you know anybody else in the Department of Corrections that received copies of this document?

A. Merna Trickey, I suppose, since she was involved in the initial request for the study, and then the superintendents of the Honor Centers.

[14]

Q. Superintendents of the various Honor Centers received various copies?

A. Uh-huh.

* * *

[15]

* * *

MR. OLDHAM: Okay. At this point I'd like to offer into evidence Deposition Exhibit No. 1.

MR. GARDNER: I'll make an objection. It's a document that is not a public record. It's not prepared under any duty to prepare it or make a report, make a public report about its contents. It also contains conclusions or matters that the jury does not need any assistance in determining.

BY MR. OLDHAM:

Q. Let me just ask you a couple of questions. Was this a document of public record which would be available to everyone or just an in-house document?

A. It was intended as an in-house document.

Q. Okay. It was for the use of people of the State of Missouri who were responsible for making plans and decisions about the Honor Center's program?

[16]

A. Yes. Management decisions.

Q. Management decisions? And it was used for that purpose?

A. Yes. Or I would have to say that it was requested for that.

* * *

Q. 1980. And the report was completed on April the 15th, 1981?

A. Yes. That's when the report was written.

[17]

Q. Okay. Now, would you go next to page 83. That page is titled "organization stability", and it talks about—let me just read this first paragraph to you. Then I want to ask you a question about it.

"An important consideration in examining any organization is the potential for (or possibility of) factions originating within the ranks which could challenge or undermine the power of executive leadership. This is particularly noteworthy whenever a group of subordinates share a common characteristic or sentiment and do not consider the head of the organization to belong in their group. (For instance, loyalty to a deposed former boss might undermine a newly appointed executive's authority. If the staff should rally together around such a shared sentiment, the potential for subterfuge and subversion clearly exists.)"

Now, why was this a part of the evaluation? Why was that paragraph a part of the evaluation?

A. Let me ask you something. You're asking me why this was written into the report?

Q. Yes.

A. By and large, this section, which is called "Organizational Stability" was just some kind of thoughts, ideas, that I was having at the time, in effect, you know, brainstorming. I had written everything down and then [18] took the report to Mr. Morgan, asked him to look at it, consider it as a draft and to give me his reaction to it, intending that we look it over and consider whether some things shouldn't be in here, this being one of the things.

Rather than that, he sent the copy on over to the Division of Corrections, and I guess what I am saying is that even at the time the report was first actually released, I had my reservations

about this section as to whether it really should have been left in here.

Q. But what you did is you prepared a draft and sent it to Mr. Morgan?

A. Yes.

Q. And then he sent it over to the Division of Corrections?

A. Yes.

Q. And as a result of that, this particular section remained in the evaluation?

A. Yes. When we met with Mr. Blackwell and Mr. Riley to review it, I suggested taking this out, and they indicated that they did not want anything changed.

Q. Okay. So Mr. Riley and Mr. Blackwell both had knowledge of this before it went into the final section and apparently approved it. Would that be an accurate statement?

[19]

MR. GARDNER: I'll object to the form of the question. It's leading.

BY MR. OLDHAM:

Q. All right. Did Mr. Blackwell and Mr. Riley ask that this be removed?

A. No.

Q. Did they ask that it remain?

A. Not that they asked that it remained. It was that I made a suggestion that it not remain, and their response was that they saw no reason why it should be taken out.

Q. Okay. You note here that in St. Louis, however, ethnic differences can be seen or imagined as a potential for organizational disruption. What were the ethnic differences that you were talking about?

A. At the time I was there when I spent the week there, there were quite a few references among the staff to, you know, black/white conflict.

Q. Now, when you say the staff, what staff are you talking about?

A. Prominently the correctional services, sergeants[sic] and unit—

Q. Would these be the white services or the black services.

A. Both.

[20]

* * *

Q. All right. On page 85, you did a breakdown of the blacks and whites at Kansas City and St. Louis and showed how power was shared between the two groups; is that correct?

A. Yes.

* * *

[21]

* * *

Q. And you note that in St. Louis, whites own—controlled only 38.62 percent of the decision-making power using your analysis?

A. Yes.

* * *

[29]

Q. Do you know what was done with this report?

A. No, I do not.

Q. Okay. Let me ask you a few more questions and I think I'll be done.

Is Mr. Morgan white or black?

A. White.

Q. Mr. Freedom, was he white or black?

A. White.

Q. Mr. Barrett Toan, was he—

A. White.

Q. Mr. Dennis Eskina?

A. White.

Q. Dale Riley?

A. White.

Q. Merna Trickey?

A. White.

Q. Mr. Blackwell?

A. White.

Q. And what is your race?

A. White.

* * *

* * *

[30]

CROSS-EXAMINATION BY MR. GARDNER:

* * *

[54]

* * *

Q. Okay. Now, let's go to page 88, if we could. You mentioned that you had some reservations about the organizational stability portion of your report of which page 88 is a part of, it being published or a part of the report being published. What kind of reservations did you have?

A. Just as I said it had actually come into existence just as some ideas that I was sketching down — wrote — have always had doubts as to whether it is actually worth much in terms of help to anyone in the management position as far as making decisions as to how to run an organization, and it really probably more wisely shouldn't have even been included in the report.

Q. You didn't find any actual subversion of the superintendent's power at the Honor Center, did you?

A. Not really, no.

Q. And you didn't find any racial polarization there, did you?

A. Not that bad, no.

Q. Okay. On page 88, you say that "Perhaps it [55] could be said that the choice of functional unit management as an organization approach is the superintendent's response to this reality." By "reality", you meant the —

A. 38 percent of power held by whites.

Q. Okay. And this was an explanation for the presence of the records officer in the control center in your mind, I take it?

A. It was in my mind. This was a product of a struggle that I was having trying to come to something which could explain the assignment of the control center operation to the records officer.

Q. And also having two white caseworkers as unit managers?

A. Yes, uh-huh.

Q. Okay. Did Mr. Schulte tell you that this caseworkers system and the records officer location was his response to the reality?

A. No.

Q. Okay. Do you know if it was Mr. Schulte who implemented the functional unit management system there?

A. Yes, it was.

Q. Okay.

A. I might add Mr. Schulte and I never discussed racial concerns in this organization at all.

* * *

DAVIS DEPOSITION EXHIBIT 1

EVALUATION OF THE MISSOURI DIVISION OF CORRECTIONS' HONOR CENTERS PROGRAM:

PART ONE

PROCESS ANALYSIS

JAMES D. DAVIS

MISSOURI DEPARTMENT OF SOCIAL SERVICES
DIVISION OF PLANNING AND BUDGET

JEFFERSON CITY, MISSOURI

APRIL 15, 198

ORGANIZATIONAL STABILITY

An important consideration, in examining any organization, is the potential for (or possibility of) factions originating within the ranks which could challenge or undermine the power of executive leadership. This is particularly noteworthy whenever a group of subordinates share a common characteristic or sentiment and do not consider the head of the organization to belong in their group. (For instance, loyalty to a deposed former boss might undermine a newly appointed executive's authority. If the staff should rally together around such a shared sentiment, the potential for subterfuge and subversion clearly exists.)

In Kansas City, a considerable portion of the casework staff formerly worked together at the Community Services Unit, of the Division of Corrections. Since the Superintendent, himself, is a part of that group, the potential for unified staff opposition against the power of the Superintendent is minimal.

In St. Louis, however, ethnic differences can be seen - or imagined - as a potential for organization disruption.

The following charts will illustrate this.

Excluding Food Service, Maintenance, Property Control, and Clerical Staff, both organizations have six levels of power among those who bear the responsibility of making decisions regarding (1) official entries into an inmate's case record, (2) employees personnel files, and (3) institutional policies.

KANSAS CITY	ST. LOUIS
6. Superintendent	6. Superintendent
5. Asst. Supt., Bus. Manager	5. Assistant Superintendent
4. Custody Chief, Activities Coordinator, Caseworkers, Records Officer	4. Records Officer, Activities Coordinator, Unit Managers, Business Managers
3. Accounts Clerk, Classification Assistants	3. Accounts Clerk, Unit Officers, Work Release Officers
2. Sergeants	2. Sergeants
1. Line Correctional Officers	1. Line Correctional Officers

NOTE: For Illustrative Purposes only. Not to be construed as entirely accurate.

The Distribution of Whites and Blacks across these levels is:

KANSAS CITY
6. W
5. W W
4. B W B W B
3. W B W
2. W B W B W W
1. W B W B W B W B W B W B W B W B

ST. LOUIS

6. W
5. B
4. W W B W W
3. B B B B B B B
2. B B B
1. B B B B B B B B B W B B B B B W B B B B B

Now, by assuming that the superintendent (level six) holds six shares of power, the next level holds five shares of power, the next level has four shares, etc., we find the following.

1. There are 21 shares of power ($1+2+3+4+5+6 = 21$)

2. At level one:

In Kansas City, 16 correctional officers divide one share of power. Each holds 0.062 shares. There are eight Whites in this level for a combined (8×0.062) power potential of 0.5 shares.

In St. Louis, 18 correctional officers divide one share of power. Each holds 0.56 shares. There are two Whites in this level for a combined (2×0.056) power potential of 0.11 shares.

3. At Level Two,

In Kansas City, six sergeants divide two shares of power. Each holds 0.33 shares. There are four Whites in this level for a combined (4×0.33) power of potential of 1.33 shares.

In St. Louis, there are no white sergeants. The Whites possess none of the power at this level.

4. At Level Three

In Kansas City, three people divide three shares of power. Each

holds 1.00 shares. There two Whites for a combined power potential of 2.00 shares.

In St. Louis, there are no Whites at this level.

5. At Level Four

In Kansas City, five persons divide four shares of power. Each holds 0.80 shares. There are two Whites in this level for a combined power potential (2 x 0.80) of 1.6 shares.

In St. Louis, five persons divide four shares of power. Each holds 0.8 shares. There are four whites in this level, for a combined (4 x 0.80) power potential of 2.0 shares.

6. At Level Five

In Kansas City, two people divide five shares of power. Both are white.

In St. Louis, one Black holds all five shares of power.

7. At level Six

At both centers the Superintendent is white.

The total shares of power held by Whites in each organization, then, is

KANSAS CITY	ST. LOUIS
Level 1 0.50	Level 1 0.11
2 1.33	2 0.00
3 2.00	3 0.00
4 1.60	4 2.00
5 5.00	5 0.00
6 <u>6.00</u>	6 <u>6.00</u>
Total 16.43	8.11

Therefore, following this illustration, it could be said that Whites at Kansas City control 78.24% (16.43 divided by 21) of the power. At St. Louis, however, Whites control only 38.62% (8.11 divided by 21) of the decision making power.

In Kansas City, executive positions are monopolized by Whites in the top Two levels, where 52.38% of the total power [(6+5) divided by 21] is concentrated.

The Ka-Cee Superintendent holds 28.57% of the power, while the two persons on the next lowest level hold 11.90% each. Neither of them is in any position to threaten his authority.

In St. Louis, executive positions are racially balanced (one White and one Black). Since (1) the majority of the program staff (63.64%) is black, (2) the Superintendent is white, and (3) the Assistant Superintendent is black, the potential for subversion of the Superintendent's power - should the staff become racially polarized - is very real.

Perhaps it could be said that the choice of Functional Unit Management as an organizational approach is the Superintendent's response to this reality. By this approach, the Superintendent has elevated two caseworkers (both white) to the job title of Unit Manager and has placed the Records Officer (a white) to the job title of Unit Manager and has placed the Records Officer (a white) over the control center. But, unit management grants for more power to Blacks than it detracts. If St. Mary's was organized similarly to Ka-Cee (which one could visualize by elevating the Business Manager to an executive position [level 5], changing unit managers to caseworkers and work release officers to casework assistants, and then making unit officers into sergeants) one would find Whites controlling 55.29% of the power.

PLAINTIFF'S EXHIBIT 7

TO: Capt. John Powell, Chief of Custody

From: Sgt. Melvin Hicks, 1st shift Sgt. /s/ Melvin Hicks

Subject: Unauthorized Firearm (7:15-7:30 a.m.)

On February 4, 1984; Sgt. Hicks and COI Doss, were finished the count, when they observed COI Edward Ratliff buzz the front door of S.M.H.C. to let a Deputy Marshall into the control center.

The Deputy Marshal was wearing his pistol hanging from his right side. Sgt. Hicks reactions were that the Deputy Marshal was entering the control center to serve a warrant to one of the residents, upon entering the control center the Deputy Marshal asked "shall I check my gun?" Whereas COI Ratliff, who was not officially on duty stated that "No that's alright, he's my brother." They begin to hold a conversation in the control center, then proceed to the Captain's office while the Deputy Marshal was still armed.

Residents were moving to the control center and hallways in order to sign out for work and report to the kitchen.

COI Ratliff and his brother entered Captain Powell's office, about 15 feet away from the control center with the unauthorized firearm still attached to the Deputy's side. Officer Ratliff sat in the Captain's seat, behind his desk while his brother sat across from him in a office chair. SGt. Hicks called COI Ratliff outside the office and ordered him to get his brother of of S.M.H.C. with that gun. COI Ratliff replied "that's alright, officers will be getting guns soon anyway," COI Ratliff is aware that all unauthorized weapons are keep in a designated area. Sgt. Hicks then told COI Ratliff that he would receive a write-up for his actions. COI Ratliff answered Sgt. Hicks by saying, "That's on you Buddy." COI Ratliff then went back into Capt. Powell's office and continued to hold his previous conversation ignoring Sgt. Hicks orders altogether.

At 7:30 a.m., COI Ratliff's brother departed from the center by leaving the Captain's office and preceeding toward the front door with COI Ratliff following to his left, they stopped at the front door and continued their conversation.

Residents were still moving around, about this time, the following officers were also presence at this time too.

1. Front doorman-Charles Kennedy
2. Control Center Officer-Ron Ramey
3. Conducting Count Officer-Michael Doss
4. Shift Commander-Sgt. Melvin Hicks

COI Ratliff is being charged with the following violation:

1. Allowing a firearm to enter the institution for socail purposes, without proper authorization.
2. Breach-of-Security
3. Disobeying a direct order
4. Taking matters in his own hands.

Sgt. Hicks recommendation or COI Ratliff be, that he be recommended for Disciplinary committee immediately; Before a disaster occurs. Also let us take note that COI Ratliff is still a probationer officer at S.M.H.C.

File:

F/A

PLAINTIFF'S EXHIBIT 38
MISSOURI DEPARTMENT OF CORRECTIONS
ST. MARY'S HONOR CENTER

MEMORANDUM

DATE: 4-17-84

TO: Capt. Powell

FROM: COI Melvin Hicks

/s/ Melvin Hicks

SUBJECT: COI Arthur Turney - Insubordination

April 7-84, COI Turney reported in for work at 10:30 p.m. for his shift.

Sgt. Hicks then began to discuss Officer Turney's Service rating with him; upon viewing his rating score. Officer Turney became indignant and began to curse. COI Turney's statement to Sgt. Hicks was. "I'm not going to sign that Mother Fucker and Fuck you Sgt. Hicks." For that open subordination toward a commanding officer, I recommend COI Turney be brought up on charges for immediate disciplinary action.

cc: Supt. Long
V. Banks
Capt. Powell
COI Turney
File:

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

(Title omitted in printing.)

NOTICE OF APPEAL FROM
AN ORDER OF A DISTRICT COURT TO
THE EIGHTH CIRCUIT COURT OF APPEALS

[Filed: Feb. 28, 1991]

Notice is hereby given that Melvin Hicks, the plaintiff in the above cause of action, hereby appeals to the United States Court of Appeals for the Eighth Circuit from the final order of the District Court wherein the District Court entered judgment in favor of St. Mary's Honor Center and against plaintiff on the merits of Count I of plaintiff's complaint and also entered judgment in favor of defendant Steve Long and against plaintiff on the merits of Count III of plaintiff's complaint. Said judgments were entered on the 31st day of January, 1991.

(Subscription omitted in printing.)